

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 21 2004

IN THE MATTER OF:

PUBLIC SERVICE
COMMISSION

THE JOINT APPLICATION OF ORCHARD
GRASS UTILITIES, INC. AND OLDHAM
COUNTY SEWER DISTRICT FOR APPROVAL
OF THE TRANSFER OF WASTE WATER
TREATMENT FACILITIES PURSUANT TO
STOCK PURCHASE AGREEMENT BETWEEN
THE PARTIES

CASE No. 2004-00029

**OCSD SUPPLEMENTAL RESPONSE
TO PSC STAFF DATA REQUEST**

The Oldham County Sewer District, co-applicant herein, files this supplemental response to specific requests for information received from the Public Service Commission counsel and staff at the public hearing held on Friday, April 16, 2004.

RESPONSE NO. 1: Financial statements of the Oldham County Sewer District as of March 31, 2004 show a cash balance as follows:

Money Market Funds	\$49,781.99
Checking	14,074.97
Certificates of Deposit	453,290.42
KACo Loan Funds	323,797.43
Accounts Receivable	<u>51,276.03</u>
Total Cash	\$892,220.84

RESPONSE NO. 2: Budget estimates using the new sewer rates which became effective February 1, 2004 are as follows:

Without Orchard Grass and Willow Creek:

REVENUE		
Residential	\$1,367,000.00	
Commercial	\$42,000.00	
Public and Institutional	<u>\$39,000.00</u>	
		\$1,448,000.00
EXPENSES		<u>\$1,357,000.00</u>
Net Revenue		\$91,000.00

With Orchard Grass and Willow Creek:

REVENUE		
Residential	\$1,704,000.00	
Commercial	\$42,000.00	
Public and Institutional	<u>\$39,000.00</u>	
		\$1,785,000.00
EXPENSES		<u>\$1,644,000.00</u>
Net Revenue		\$141,000.00

Expenses include those from operations, administration, depreciation, and debt service. In addition, expense estimates are based upon a "50/50 forecast" meaning that we believe there is a 50% chance that the expenses will be lower than projected, and a 50% chance that expenses will be higher than projected.

RESPONSE NO. 3: Attached as Exhibit A is a copy of the Interlocal Cooperation Agreement between the Oldham County Sewer District and the Louisville/Jefferson County Metropolitan Sewer District, with Letter of Explanation dated February 7, 2002.

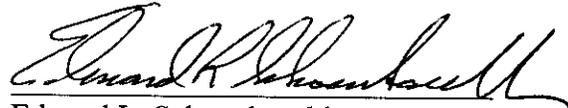
Respectfully submitted,



Edward L. Schoenbaechler
HALL, RENDER, KILLIAN, HEATH & LYMAN, P.S.C.
2501 Nelson Miller Parkway, Suite 102
Louisville, Kentucky 40223
Counsel for Oldham County Sewer District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on: Robert C. Moore, Hazelrigg & Cox, LLP, P. O. Box 676, 415 West Main Street, Frankfort, Kentucky 40602; Robert L. Madison, 5407 Baywood Drive, Louisville, Kentucky 40241-1318; and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204, on this the 20th day of April 2004.



Edward L. Schoenbaechler

OLDHAM COUNTY SANITATION DISTRICT

COMMISSIONERS:
RICHARD CHADWELL
TOM SIMPSON
FORREST B. EWEN

Chief Engineer:
JOHN M. BENNETT, JR., P.E.

February 7, 2002

To Whom It May Concern:

The Oldham County Sanitation District (OCSD) was formed in December 1996 by Oldham County Fiscal Court to address environmental and sanitary sewer infrastructure needs in one of Kentucky's fastest growing counties. In December 1993 an agreement of interlocal cooperation between Oldham County Fiscal Court and the Louisville and Jefferson County Metropolitan Sewer District (MSD) was implemented to provide sewer service to a development divided by the Oldham/Jefferson County line. This agreement resulted in a study of potentially broader service area needs and produced the Oldham County Action Plan. This plan was the first analysis of regional sewer service to a largely rural and developing county with watersheds tributary to Jefferson County.

During development of the Oldham County Action Plan, MSD was supportive to Oldham County Fiscal Court through both financial and professional resources. With this plan as a framework, OCSD has grown through both the acquisitions of privately owned sewer utility systems served by small treatment plants and new system construction as a result of grants and loans procured by OCSD. The goal of OCSD is to regionalize these private sewer systems and improve wastewater service throughout the County.

OCSD and MSD have an interlocal cooperation agreement that provides three options: A) MSD operation of collection and treatment facilities owned by OCSD, B) MSD operation of collection systems with treatment at MSD facilities, and C) OCSD operation of facilities and MSD will accept sewage and other liquid wastes from OCSD facilities for treatment. OCSD has received consistent and continuous support during the relationship with MSD through attendance of MSD representatives at OCSD regular monthly Board meetings and applicable public hearings. OCSD and MSD are currently pursuing a joint wastewater facilities plan as a guide to identify solutions to wastewater problems that are in the best interest of northeast Jefferson County and parts of Oldham County relative to service areas and the Harrods Creek and Floyds Fork Watersheds.

Sincerely,



Richard Chadwell, President
Oldham County Sanitation District

7311 Highway 329, Suite 542
P.O. Box 809
Crestwood, Kentucky 40014

Phone: (502) 243-3215 Fax: (502) 243-0802 e-mail: ocsdjmb@bellsouth.net

INTERLOCAL COOPERATION AGREEMENT

By and Between

OLDHAM COUNTY SANITATION DISTRICT

And

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT**

INTRODUCTION

THIS AGREEMENT is made and entered into as of the _____ day of _____, 1999 by and between Oldham County Sanitation District (hereinafter "OCSD"), having its principal place of business located at P. O. Box 809, Crestwood, Oldham County, Kentucky 40014; and the Louisville and Jefferson County Metropolitan Sewer District (hereinafter "MSD"), having its principal place of business located at 700 West Liberty Street, Louisville, Jefferson County, Kentucky 40203-1911.

WHEREAS, OCSD is a sanitation district duly created and existing pursuant to the provisions of the Kentucky Revised Statutes, §§ 67.083 and 67.715(2), and Chapter 220, and by Oldham County Ordinance No. 96-830-26, acting by and through its duly appointed Board of Commissioners as its statutory governing body. OCSD is empowered, in part, to provide for the collection and disposal of sewage and other liquid wastes produced within the district; to construct the infrastructure required to collect, transport, and treat sewage and other liquid wastes; to maintain, operate, and repair the infrastructure, or to contract therefor; and to do all things necessary for the fulfillment of the purposes for which OCSD was created as set out in KRS §§ 220.010 to 220.520.

WHEREAS, MSD is a public body corporate and political subdivision duly created and existing pursuant to the provisions of the Kentucky Revised Statutes, §§ 76.010 to 76.210, acting by and through its duly appointed Board of Directors as its statutory governing body.

WHEREAS, OCSD and MSD, being "public agencies" within the definition included in KRS § 65.230, desire to enter into an agreement pursuant to the Interlocal Cooperation Act, KRS §§ 65.210 to 65.300, to provide for joint and cooperative action to their mutual advantage.

NOW, THEREFORE, in consideration of the premises, covenants, and mutual promises contained herein, the parties agree as follows:

TERMS OF AGREEMENT

1. **Purpose of Agreement.** The purpose of this Agreement is to provide for joint and cooperative efforts allowing MSD to provide services for the operation of sanitary sewage facilities and for the treatment and disposal of sewage and other liquid wastes within defined sections of the OCSD service area, as set out in this Agreement.

2. **Duration of Agreement.**
 - a. The duration of this Agreement shall be for a period of 20 years for the initial service areas, with each succeeding service area to be for the balance of the 20 year term that is remaining at the time the succeeding service area is added, and shall automatically be renewed for an additional term of 20 years unless terminated. Each period of renewal shall be on the same terms and conditions as set forth herein.

 - b. This Agreement, or any addendum to this Agreement, may be terminated by either party by providing written notice of intent to terminate at least one year prior to the termination date. Upon termination of this Agreement, or any addendum to this Agreement, OCSD will take all steps necessary to provide for the collection and disposal of sewage and other liquid wastes to the residents of the service areas affected by the termination.

3. **MSD Services.**

a. MSD will provide the following services under the terms of this Agreement:

- (i). For all Type A MSD service areas within the OCSD district as set out in the addendums hereto, MSD agrees to provide all equipment and services required to operate existing wastewater treatment plants which were either constructed or acquired by OCSD and all appurtenances thereto, including collector sewers, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, and other similar facilities. MSD will operate and maintain wastewater systems within the OCSD district to the same statutory and regulatory level as MSD is required to do within its service area in Jefferson County, Kentucky. MSD shall meet or exceed all wastewater treatment requirements and quality standards designated by OCSD's current permit with the Kentucky Division of Water, the Commonwealth of Kentucky, and the United States Environmental Protection Agency. All wastewater facilities in public ways and easements in Type A MSD service areas shall remain the property of OCSD with MSD having the right to manage and control the wastewater facilities in the normal course of completing MSD's obligations under this provision. Upon termination of this Agreement, MSD shall surrender and OCSD shall assume management and control of all facilities in Type A MSD service areas.
- (ii). For all Type B MSD service areas within the OCSD district as set out in the addendums hereto, MSD agrees to provide all equipment and services required to operate existing sanitary sewer systems and all appurtenances thereto, including collector sewers, trunk sewers, intercepting sewers, siphons, pumping stations, and other similar facilities. MSD will accept

sewage and other liquid wastes from the (OCSD) existing sanitary sewer system into its own sanitary systems in Jefferson County and will transport, treat, and dispose of that sewage and other liquid wastes with its own facilities. MSD will operate and maintain wastewater systems within the OCSD district to the same statutory and regulatory level as MSD is required to do within its service area in Jefferson County, Kentucky. All wastewater facilities in public ways and easements in Type B MSD service areas shall remain the property of OCSD with MSD having the right to manage and control the wastewater facilities in the normal course of completing MSD's obligations under this provision. Upon termination of this Agreement, MSD shall surrender and OCSD shall assume management and control of all facilities in Type A MSD service areas.

- (iii). For all Type C MSD service areas within the OCSD district as set out in the addendums hereto, MSD will accept sewage and other liquid wastes from the existing OCSD wastewater facilities into its own sanitary sewer systems in Jefferson County and will transport, treat, and dispose of that sewage and other liquid wastes with its own facilities.

- b. For its services provided for in Subparagraph 3.a., MSD will collect fees from the customers of OCSD based on the applicable MSD rates, which will include billing and administrative services necessary for the fee collections. However, OCSD will be responsible for the collection of delinquent accounts.

- 4. **MSD Service Areas.** In the addendums attached hereto, OCSD and MSD will jointly define the existing sanitary sewer systems in the OCSD district which will comprise MSD's service areas. OCSD will be responsible for the construction of all sanitary sewer systems within its district. OCSD and MSD will designate the MSD service area type as defined in paragraph 3.a. MSD's services will continue

for those defined service areas for the term of this Agreement and any extensions thereof, unless the parties mutually agree for the termination of MSD's services for specific service areas prior to the termination of this Agreement or any extensions thereof, or the reclassification of the service area Type to be applied.

5. **OCSD Support To MSD.** OCSD will provide all access and support to MSD necessary for MSD's fulfillment of its service requirements, including but not limited to right-of-ways and easements. OCSD and MSD agree to cooperate and provide any reasonable information and assistance for the purpose of carrying out the terms of this Agreement. MSD shall supply all employees necessary to operate and maintain the wastewater facilities referenced herein and said employees shall be governed by MSD's employment practices.

6. **Payment For Services.**
 - a. MSD shall collect fees from OCSD and/or OCSD's customers based on the services provided within the different service areas. Service charges will be based on the following:
 - (i). Effective with the first full water meter reading period following the Execution of this Agreement MSD shall charge and collect from all customers within Type A MSD service areas in accordance with MSD's regular schedule of Rates, Rentals and Charges which may be amended from time to time. OCSD is responsible for billing and collecting the charges for new wastewater connections, capacity charges, tap on connection fees, and wastewater application fees.

- (ii). Effective with the first full water meter reading period following the Execution of this Agreement MSD shall charge and collect from all customers within Type B MSD service areas in accordance with MSD's regular schedule of Rates, Rentals and Charges which may be amended from time to time. OCSD is responsible for billing and collecting the charges for new wastewater connections, capacity charges, tap on connection fees, and wastewater application fees. All capacity charges collected within Type B MSD service areas are to be turned over to MSD within 7 days after their collection.

 - (iii). Effective with the first full water meter reading period following the Execution of this Agreement MSD shall charge and collect from all customers within Type C MSD service areas a treatment component charge based on MSD's regular schedule of Rates, Rentals and Charges which may be amended from time to time. The treatment component charge shall represent those costs associated with the actual transportation, treatment and disposal of sewage and other liquid wastes accepted from the existing OCSD wastewater facilities. OCSD is responsible for billing and collecting the charges for new wastewater connections, capacity charges, tap on connection fees, and wastewater application fees. All capacity charges collected within Type C MSD service areas are to be turned over to MSD within 7 days after their collection.
- b. OCSD is responsible for billing and collecting the charges for new wastewater connections, capacity charges, tap on connection fees, and wastewater application fees. MSD recognizes that OCSD may add a surcharge for debt retirement and other expenses in addition to MSD's

charges set out in paragraphs (i), (ii), and (iii) above and MSD agrees to bill and collect those surcharges on behalf of OCSD.

- c. OCSD is responsible for securing all long-term financing and administering the re-payment of such debt.

- 7. **MSD's Interlocal Agreement With Oldham County.** On December 7, 1993, MSD entered into an Agreement of Interlocal Cooperation with Oldham County, a public body corporate created by the Commonwealth of Kentucky acting through its duly elected Fiscal Court, under the terms of which, MSD is responsible for the operation and maintenance of the wastewater facilities for the Glen Oak Subdivision in Oldham County. MSD, Oldham County, and OCSD have agreed that the wastewater facilities for the Glen Oaks Subdivision will become an asset of OCSD and MSD will operate the wastewater facilities for the Glen Oaks Subdivision as a Type B MSD service area. Upon termination of this Agreement, MSD shall surrender and OCSD shall assume management and control of all facilities in the Glen Oaks Subdivision. A copy of the December 7, 1993 interlocal agreement between MSD and Oldham County and the amendment to that agreement are attached hereto as Exhibit A to this Agreement.

- 8. **Board of Administration.** A joint board consisting of the president of OCSD or his duly appointed representative, the executive director of MSD or his designated representative, and the County Judge Executive of Oldham County shall be responsible for administering the cooperative undertaking set out in this Agreement.

9. **Indemnification.**

- a. (i). To the fullest extent permitted by law, MSD shall indemnify, hold harmless, and defend (with counsel subject to OCSD's approval, which approval shall not be unreasonably withheld) OCSD and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to consultant and attorneys' fees, arising out of or resulting from performance of the services of this Agreement, including loss or expense attributable to bodily injury, sickness, disease, or death, to injury to or destruction of tangible property, including loss of use resulting therefrom, and to economic losses, but only to the extent caused in whole or in part by the negligent acts or omissions of MSD or anyone directly or indirectly employed by MSD or anyone for whose acts MSD may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by OCSD. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnify which would otherwise exist as to a party or person described in this Paragraph 9.a.
- (ii). In claims against any person or entity indemnified under this Paragraph 9.a. by an employee of MSD or anyone directly or indirectly employed by MSD or anyone for whose acts MSD may be liable, the indemnification obligation under this Paragraph 9.a. shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for MSD under worker's or workmen's compensation acts, disability benefits acts, or their employee benefits acts.
- (iii). MSD shall pay all royalties and license fees required for its services hereunder. MSD shall defend suits or claims for infringement of patent rights and shall hold OCSD harmless from loss on account thereof.

b. (i). To the fullest extent permitted by law, OCSD shall indemnify, hold harmless, and defend (with counsel subject to MSD's approval, which approval shall not be unreasonably withheld) MSD and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to consultant and attorneys' fees, arising out of or resulting from performance of OCSD's obligations of this Agreement, including loss or expense attributable to bodily injury, sickness, disease, or death, to injury to or destruction of tangible property, including loss of use resulting therefrom, and to economic losses, but only to the extent caused in whole or in part by the negligent acts or omissions of OCSD or anyone directly or indirectly employed by OCSD or anyone for whose acts OCSD may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by MSD. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Paragraph 9.b.

(ii). In claims against any person or entity indemnified under this Paragraph 9.b. by an employee of OCSD or anyone directly or indirectly employed by OCSD or anyone for whose acts OCSD may be liable, the indemnification obligation under this Paragraph 9.b. shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for OCSD under worker's or workmen's compensation acts, disability benefits acts, or their employee benefits acts.

10. **Disputes.** OCSD and MSD recognize that disputes may arise during the term of this Agreement and that such disputes may adversely affect the performance of services under this Agreement. OCSD and MSD further recognize that a prompt

comprehensive approach to avoiding and resolving disputes is beneficial to both parties. OCSD and MSD therefore agree that the following dispute resolution procedure shall be used to resolve any disputes that may arise.

- a. Within 20 working days after the commencement of an event that may result in the making of a claim by either party, or within 10 working days after the end of said event, whichever is longer, the claiming party shall give a written claim to the other party. The claim shall set forth the circumstances giving rise to the claim, facts, documents, backup data, and other information supporting the claim, the relief sought, and those persons with knowledge of the circumstances giving rise to the claim. Failure by the claiming party to provide written notice of the claim as provided herein shall result in a waiver of the claim.
- b. If a party receiving a claim objects, in whole or in part, to the claim, it shall give written notice to the other party within 20 working days after actually receiving said notice of its objection to the claim and the basis for the objection, including all documents, backup data, and other information which would disapprove the claim, and the names of any additional persons having knowledge that would tend to disapprove the claim. This notice may be mailed, telecopied, hand delivered, or otherwise transmitted to the other party. If a party receiving a claim fails to give written notice of its objection as provided herein, the receiving party shall be conclusively deemed to agree with said claim and the claimant shall be entitled to the relief requested.
- c. If the party receiving the claim files a notice of objection, a senior executive of OCSD and a senior executive of MSD shall meet within 30

days after commencement of the dispute in an attempt to resolve the dispute.

- d. If the senior executives are unable to resolve the dispute, the senior executives of the parties, or their attorneys, shall meet within 10 working days after a party has received a written demand for mediation, and agree on a mediator. If the parties are unable to agree upon a mediator, either party may file a written demand for mediation on the other and a mediator shall be appointed pursuant to the Commercial Mediation Rules of the American Arbitration Association. The date of the mediation shall be set within 20 working days after the selection of a mediator. All disputes, including disputes identified after the selection of the mediator, shall be submitted to the mediator.
- e. If the parties are unable to resolve all of their disputes in mediation, or if the mediation is not set within 20 working days after a mediator is selected, either party may pursue its remedy in a court of law. However, mediation shall be an express condition precedent to the pursuit of any remedy in civil court.

11. Severability

- a. Nonmaterial provisions of this Agreement are severable. In the event that any nonmaterial provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such finding shall not invalidate and render unenforceable any other provisions herein except to the extent required by law.

- b. Material provisions of this Agreement are nonseverable. In the event that any material provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, this Agreement shall terminate. However, if this Agreement is terminated by operation of law, then the parties agree that MSD will continue to provide the services set out in Subparagraph 3.a. and MSD will continue to collect fees for its services for a period of not less than 180 days from the date of a court's ruling to allow time for the parties to re-negotiate this Agreement. The parties acknowledge that the requirements of this provision of the Agreement shall survive the termination of the Agreement.

12. **Governing Law, Jurisdiction and Venue.** This Agreement shall be interpreted pursuant to the laws of the Commonwealth of Kentucky. The Oldham Circuit Court, Oldham County, Kentucky, shall have exclusive jurisdiction and venue to interpret the terms of this Agreement, to settle disputes arising under this Agreement, and to enforce this Agreement. The parties to this Agreement agree and hereby submit themselves to the jurisdiction of the Oldham Circuit Court for these purposes.

13. **Scope Of And Commitment To This Agreement.**

- a. This Agreement, including its preamble and recitals and all exhibits and amendments hereto, shall constitute and contain the entire agreement and understanding of the parties and shall supersede and replace all prior negotiations, proposed agreements or agreements, whether written or oral, except as may be specifically provided for in this Agreement.
- b. In executing this agreement, OCSD and MSD accept all duties, functions and obligations created thereby and agree to perform promptly and with

the best of their ability all tasks, activities, and obligations necessary to effect the intent of this Agreement.

- 14. **Approval Of The Attorney General.** Pursuant to the provisions of KRS § 65.260(2) of the Interlocal Cooperation Act, this Agreement shall be submitted to the Attorney General of the Commonwealth of Kentucky for approval based upon a determination that the Agreement is in the proper form and compatible with the laws of the Commonwealth of Kentucky and meets the conditions set forth in KRS §§ 65.210 to 65.300.

IN WITNESS THEREOF, OCSD and MSD have executed this Agreement in their respective names by authorization of their governing bodies, effective on the dates indicated.

OLDHAM COUNTY SANITATION DISTRICT

BY: *Frederick Radwell*

TITLE: *Pres.*

DATE: *8-9-99*

Authorized by Resolution of the OCSD Board of Directors on *6-24-99*.

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

BY: *Bob R. G.*

TITLE: *Executive Director*

DATE: *8/12/99*

Authorized by Resolution of the MSD Board of Directors on *July 12, 1999*.

Reviewed By:

Wynne F. Shain

OLDHAM

Attorney At Law
700 West Liberty Street
Louisville, Kentucky 40203-1911

Approval Of The Attorney General:

This Interlocal Cooperation Agreement between the Oldham County Sanitation District and the Louisville and Jefferson County Metropolitan Sewer District is in the proper form, is compatible with the laws of the Commonwealth of Kentucky, and meets the conditions set forth in KRS §§ 65.210 to 65.300. Therefore, this Agreement is approved pursuant to KRS § 65.260(2).

**ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY**

BY: Michael Cantel
Asst Atty General

DATE: 2/10/00

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Addendum

INTERLOCAL COOPERATION AGREEMENT

By and Between

OLDHAM COUNTY SANITATION DISTRICT

And

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

At the request of the Office of the Attorney General of the Commonwealth of Kentucky and so that this Interlocal Cooperation Agreement may comply with the statutory requirements of KRS 65 pertaining to Interlocal Cooperation Agreements, the following additions are hereby made and incorporated within the Interlocal Cooperation Agreement by and between the Oldham County Sanitation District and the Louisville and Jefferson County Metropolitan Sewer District:

Section 8. Board of Administration, shall include the following sentence at the end of the current section.

The joint board shall have the power to advise OCSD and MSD regarding issues and conflicts that may arise under this Agreement. The joint board may suggest interpretations, courses of action and dispute resolutions. The joint board shall have no power of enforcement under this agreement. Neither OCSD nor MSD relinquish any responsibilities or powers that have been lawfully delegated to them.

OLDHAM COUNTY SANITATION DISTRICT

BY: Richard Chadwell
TITLE: President
DATE: 1-5-00

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

BY: A. L. R. G.
TITLE: EXECUTIVE DIRECTOR
DATE: 12/20/99